BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A REGULATORY ORDER ISSUED BY CLALLAM COUNTY TO TWIN RIVERS, INC. TWIN RIVERS, INC., Appellant, v. CLALLAM COUNTY, Respondent.	SHB No. 77-41 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a regulatory order directed to appellant Twin Rivers, Inc., came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert F. Hintz, Robert E. Beaty, and Gerald D. Probst, at a hearing on April 26, 1978 in Lacey. David Akana presided.

Appellant was represented by its attorney, David V. Johnson; respondent was represented by Craig Knutson, Deputy Prosecuting Attorney.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

Appellant is the general partner which was organized to manage approximately five acres of property owned by fourteen limited partners. The subject property is located in Clallam County on the shores of the Strait of Juan de Fuca and is bordered on the east by the East Twin River and on the west by the West Twin River. The site lies within a rural environment designation of the shoreline master program. The property was purchased in August of 1975 by the limited partners and was managed by a predecessor general partner until its formal replacement by the limited partners. The property is used by the limited partners as a private camping area for their self-contained campers.

II

Prior to October 20, 1976, the former general partner had performed certain grading, clearing and bulldozing upon wetlands associated with the bordering shorelines. Also during this time period, the limited partners placed a single-rail fence and gate made from donated materials along the majority of their south property line for the purpose of keeping people off their property. Fallen trees located more than 200 feet from the shoreline were removed and signs were placed on the fence. A number of fire pits were placed on the site for individual use.

In October, 1976, respondent's agent visited the property and

found a small amount of debris at the high water mark.

III

After October 20, 1976, the appellant, through the labor of its limited partners, laid a 400-foot long plastic water pipeline to their property and placed eight faucets therein at a cost for materials of about $100.

IV

Since the placing of fences and signs on the property, respondent's agent testified that he noticed that the public was seldom seen using the beach along the Strait of Juan de Fuca. Appellant's evidence showed continued use of the shoreline by members of the public over a non-fenced area. To gain access to the shoreline, the public must cross appellant's property over which it has no apparent right of access. Appellant allows public access to the water over the unfenced portion of its property, however.

V

Witnesses from the county estimate that the value of the separate improvements to the land, both inside and outside of the shoreline jurisdictional area since August 1975, to be $1000 or more. The actual expense to appellant for the separate improvements has been about $100 because the improvements were donated through the efforts of the limited partners.

VI

By notice dated November 21, 1977, respondent ordered appellant to submit applications for a shoreline substantial development permit and a preliminary plat. Such action was necessitated because appellant allegedly was interferring with the public's use and access to the

shoreline and was operating as an unapproved camper club subdivision without the required facilities during the period from October 20, 1976 to the date of the notice. Appellant appealed the order to this Board.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

A regulatory order issued by a local government may require the recipient thereof to take specific action if

> (a) The development constitutes an integral part of substantial development being undertaken, or about to be undertaken, on the shorelines of the state in the absence of a substantial development permit; or
>
> . . .
>
> (c) The development being undertaken on the shorelines of the state is in violation of RCW 90.58.020, and the following: . . .
>
> (ii) . . . the master program for the area. WAC 173-14-180(1)

Such regulatory order must set forth the "specific nature, extent and time of violation, and the damage or potential damage." WAC 173-14-180(2)(a). Specific corrective action and the time for such action can be directed by the order. WAC 173-14-180(2)(b).

II

The first question to be addressed is whether there is or is about to be a substantial development on the shorelines. RCW 90.58.030(3)(d) defines development:

> . . .
>
> "Development" means a use consisting of the construction or exterior alteration of structures;

> dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;
>
> . . .

RCW 90.58.030(3)(e) defines substantial development:

> . . .
>
> "Substantial development" shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. . . .

A conclusion that a development is "substantial" requires that the regulatory order be upheld and that a permit be secured. WAC 173-14-180; RCW 90.58.140.

III

Allocation of the burden of proof of an appealed regulatory order is not set forth in the statutes or regulations. Chapter 90.58 RCW; chapter 173-14 WAC. Such burden should be placed upon the party who is seeking to change the present state of affairs, here the county. We conclude that appellant's activities constituted "developments" within the meaning of RCW 90.58.030(3)(d). However, we are unpersuaded from the evidence that the total developments placed within and outside of the shoreline area since October 20, 1976 exceed a cost or fair market value of $1,000. Further, we find no material interference with the normal use of the water or shorelines of the state. Moreover, the evidence shows that the public has no existing right of access across appellant's property which has been affected by

appellant's developments.

We conclude therefore, from the record established, that the total homemade developments do not, as yet, amount to a substantial development. It follows that any development constructed on or after October 20, 1976 as set forth in the regulatory order, does not amount to a "substantial development." The regulatory order cannot be upheld on the grounds that there is a "substantial development."

IV

A second basis upon which the regulatory order may be supported is that the development being undertaken violates RCW 90.58.020 and the master program. We can find no violations of the policy of the Act, RCW 90.58.020, or the cited sections of the adopted and approved master program[1] by the developments as presented. Thus,

---

1. The rural environment sections of the master program provides in part:

. . .
E.1.c. Dumping of foreign material is to be allowed only under a conditional use permit. (Page 28);
. . . .
F.7.a. Vistas and viewpoints shall not be degraded and visual access to the water from such vista shall not be impaired by placement of signs and billboards. (Page 35);
. . . .
F.21.c. Other than single-family residences, priority shall be given to those developments which provide recreational uses and facilitate access to the shoreline. (Page 39).
. . .
F.21.e. In recreational areas in a Rural Environment, parking and camping sites must be located inland from the shoreline and the immediate edge of the water. (Page 40).
. . .
F.21.h. The regulations issued by state and local health agencie

the regulatory order does not meet the requirements of WAC 173-14-180 and cannot be upheld.

V

Further we cannot find that the development as presently constructed and used threatens public health, safety and public rights in navigable waters as alleged in the regulatory order.

While the county may have justification for questioning the legal form and purpose of the organization with regard to its recreation and camper club ordinances, we find it unnecessary to

---

Cont.

> shall govern all sanitary considerations and sewage disposal methods. Further, such systems as determined upon must not adversely effect or alter the natural features which are attractive for recreational uses of the shoreline. (Page 40).
> . . .
> F.21.j. Recreational subdivisions are an appropriate use in the Rural Environment, provided that they do not conflict with the regulations governing the natural system in which they are to be placed. Such developments shall be designed in compliance with the Clallam County Recreational Subdivision Ordinance, as determined by the Clallam County Planning Commission, and state and local health regulations. Recreational subdivisions shall place utilities underground. (Page 40).

Based upon the evidence at the hearing, the first five quoted provisions have not been shown to be violated. With respect to the sixth provision, the glossary in Appendix C, page C-7, defines recreational subdivision as: "A subdivision in which lots are sold for [and] the use is restricted to recreation, weekend, summer or other part-time use by camper vehicles or tents." A "subdivision" is the "division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land." RCW 58.17.020(1). See Clallam County Ordinance No. 38, 1971, Article 2, para. 15; Clallam County Ordinance No. 39, 1971, Section 1.03.15. Here, there is no "subdivision" of land into "five or more lots" which lots are "sold." Thus, the "recreation subdivision" provision of the master program is not applicable to the instant matter, although it appears that the membership camper club ordinance may apply to appellant's activities.

comment on the issue.

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

Clallam County Regulatory Order dated November 21, 1977 is vacated.

DONE this 24th day of May, 1978.

SHORELINES HEARINGS BOARD

DAVE J. MOONEY, Chairman

CHRIS SMITH, Member

ROBERT E. BEATY, Member

ROBERT F. HINTZ, Member

GERALD D. PROBST, Member